

memorandum

DATE: NOV 04 2006
REPLY
ATTN OF: EM-13

SUBJECT: Environmental Management Site-Specific Advisory Board Guidance

TO: Distribution

Attached for your implementation is the revised Guidance for Management of the Environmental Management (EM) Site-Specific Advisory Board (SSAB). This Guidance is consistent with the requirements of the Federal Advisory Committee Act of 1972, **5 U.S.C. Appendix 2 (FACA)**; the General Services Administration (GSA) implementing regulations, **41 CFR Subpart 102-3**; and the Department of Energy (DOE) newly revised Advisory Management Program Manual, **DOE M 515.1-1 (Manual)**.

The EM SSAB structure of local boards allows DOE to establish uniform administrative guidelines and management controls across the complex. The Code of Federal Regulations requires agencies to ensure that there are the necessary plans and procedures covering implementation in place to support an advisory committee's mission and function. The EM SSAB Guidance has been revised to reflect changes in the DOE Manual and the EM SSAB Charter. This Guidance replaces the Interim Guidance dated June 2006.

It is the responsibility of you, your Deputy Designated Federal Officer, and Federal Coordinator to ensure compliance with FACA, GSA regulations, DOE Manual, EM SSAB Charter, and this Guidance.

If you have any questions, please contact Ms. Melissa A. Nielson, Director of the Office of Public and Intergovernmental Accountability, at 202-586-0356.



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U.S. Department of Energy Environmental Management Site-Specific Advisory Board

Guidance

Prepared by

**The Office of Public and
Intergovernmental Accountability**

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ENVIRONMENTAL MANAGEMENT SITE-SPECIFIC ADVISORY BOARD GUIDANCE

The Office of Public and Intergovernmental Accountability

September 2008

The purpose of this document is to provide guidance regarding the operation of the Environmental Management Site-Specific Advisory Board (EM SSAB or Board). This updated guidance supersedes the Interim Guidance dated June 2006. This document is intended to summarize pertinent sections of the requirements of the Federal Advisory Committee Act of 1972, **5 U.S.C. Appendix 2 (FACA)**; the General Services Administration (GSA) implementing regulations, **41 CFR Subpart 102-3, (CFR)**; and the Department of Energy (DOE or Department) Advisory Management Program Manual, **DOE M 515.1-1 (Manual)**. It is not intended to replace these documents. In addition, it provides EM SSAB specific mandatory and suggested direction and guidance.

I. Background and Introduction

In 1993, in response to the increasing need for public participation in the DOE decisions, the Department participated in a national policy dialogue on federal facility environmental restoration decision-making and priority-setting issues. The Keystone Center, a non-profit environmental conflict management group, established a working dialogue among representatives of the federal government, Tribal governments, Native American organizations, and local citizen groups. The goal was to develop consensus policy recommendations aimed at improving the process by which federal facility environmental cleanup decisions were made.

In June 1994, the Office of Management and Budget (OMB) and GSA approved the Charter that established the EM SSAB under FACA. It is that under which local site-specific boards are organized. The Charter has been renewed every two years since 1996.

In accordance with its charter, the EM SSAB exists to provide the Assistant Secretary for Environmental Management, the appropriate Site Manager(s), and any other DOE officials the Assistant Secretary shall designate, with information, advice, and recommendations concerning issues affecting the EM Program at various sites. Specifically, at the request of the Assistant Secretary or the Site Managers, the Board may provide advice and recommendations concerning the following EM site-specific issues: clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land-use and long-term stewardship; risk assessment and management; and clean-up science and technology activities. The Board may also be asked to provide advice and recommendations on any other EM projects or issues.

The local Boards organized under the EM SSAB Charter draw upon diverse community viewpoints to provide advice and recommendations to DOE. Some local Boards are associated with DOE Field Offices for which EM is the landlord program, while other local Boards are supported by Field Offices that are managed either by the Office of Science (SC), the National Nuclear Security Administration (NNSA), or the Office of Nuclear Energy (NE). However, in accordance with the EM SSAB Charter, the mission and operation of any given local Board is unaltered whether the landlord is EM, SC, NNSA, or NE.

The goal of the EM SSAB is to more directly involve stakeholders in EM planning and decision-making processes for the nuclear weapons complex cleanup. The EM SSAB is only one component of EM's public participation program, and is not intended to be an exclusive means of public participation. It is the policy of DOE and EM to conduct its programs in an open and responsive manner, thereby, encouraging and providing the opportunity for public participation in its planning and decision-making processes.

II. Roles and Responsibilities

II.a. DOE Headquarters

Office of the Secretary of Energy:

The Secretary of Energy, per the requirements of FACA and the CFR, will:

- Comply with FACA and the CFR. **FACA § 8; CFR § 102-3.105(a)**
- Issue administrative guidelines and management controls. **FACA § 8(a); CFR § 102-3.105(b)**
- Designate a Committee Management Officer (CMO). **FACA § 8(b); CFR § 102-3.105(c)**
- Ensure advisory board meetings are open to the public unless a written determination for closing any meeting is provided. **CFR § 102-3.105(d)**
- Review, at least annually, the need to continue the advisory committee. **CFR § 102-3.105(e)**
- Develop procedures to assure that advice and recommendations of the advisory committee is the result of independent judgment. **CFR § 102-3.105(g)**
- Assure that the interests and affiliations of advisory board members conform with applicable conflict of interest statutes and regulations. **CFR § 102-3.105(h)**
- Designate a Designated Federal Officer (DFO) for the advisory committee. **CFR § 102-3.105(i)**
- Provide opportunity for reasonable public participation in advisory committee activities. **CFR § 102-3.105(j)**

Office of Management (MA)

Office of the Executive Secretariat (MA-70):

The Executive Secretariat, per the requirements of FACA and the CFR, will:

- Ensure compliance with FACA. **FACA § 8(b)(1); CFR § 102-3.115**
- Ensure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes.
- Renew or terminate the EM SSAB Charter as appropriate. Annually, review the need to continue the EM SSAB. **CFR § 102-3.115**
- Process *Federal Register* notices for EM SSAB meetings. **FACA §§ 8(b)(1), 10(a)(2); CFR §§ 102-3.115, 102-3.150(a)**. (See Section III.a.2 of this Guidance for further parameters.)

The Manual requires that the Executive Secretariat:

- Act as the Department's CMO. **Manual § I.6.c**
- Review and concur on all advisory committee packages and appraise the need for or the continuation of advisory committees. **Manual § I.6.c**
- In coordination with heads of Departmental elements and the Office of General Counsel, ensure that advisory committees are fairly balanced in membership in terms of points of view represented and functions to be performed. **Manual § I.6.c**
- Review and concur on all requests for closing part or all of an advisory committee meeting. **Manual § I.6.c**
- Maintain hard copies of the following advisory committee records. **Manual § VII.2.a:**
 - Committee establishment and renewal proposals
 - *Federal Register* notices
 - Detailed minutes and transcripts (if available) of all meetings
 - Committee reports

Assistant Secretary for Environmental Management (EM-1):

EM-1, per the requirements of FACA and the CFR, will:

- Ensure compliance with **FACA and CFR**
- Issue administrative guidelines and management controls
- Appoint and remove Board members (In limited cases, this authority has been delegated to the Field under Section III.c.3 of this Guidance)

Office of Regulatory Compliance (EM-10)

Office of Public and Intergovernmental Accountability (EM-13):

EM-10 and EM-13, per the requirements of FACA and the CFR, will:

- Manage and maintain a library of EM SSAB documentation, including annual reports, work plans, recommendations and responses, meeting minutes, and membership information. **FACA §§ 10(b), 12(a)**
- Each Federal advisory board is required to have a DFO, in this case a DOE employee, who works closely with the Board. **FACA § 10 (e); CFR § 102-3.120**

The Manual requires that EM-10 and EM-13:

- Prepare *Federal Register* notices for local EM SSAB public meetings. **Manual § I.6.i**
- Ensure that conflict of interest regulations are followed. **Manual § I.6.i**
- Prepare, process, and obtain approval of EM SSAB new/renewal membership packages. **Manual § I.6.i**

- Prepare, process, and obtain approval of EM SSAB Charter renewal. **Manual § I.6.i**
- Maintain EM SSAB records and documentation. **Manual § I.6.i**

To enhance compliance with FACA, CFR, and DOE policy, EM-10 and EM-13 will:

- Delegate to local DOE employees the responsibility to serve as Deputy Designated Federal Officers (DDFOs) for local Boards. (A site may have more than one DDFO appointed at one time).
- Inform the EM SSAB members of Departmental processes, programs, projects, and activities directly affecting the Board's mission and purpose.
- Coordinate the review and approval of local Board operating procedures/bylaws with the Office of General Counsel to ensure that they are in compliance with FACA and other regulations and requirements.

Office of the Assistant General Counsel for General Law (GC-77):

The Manual requires that GC-77:

- Provide legal support for EM SSAB Charter renewal, Charter termination, official appointments of Board members, and policy issues. **Manual § I.6.g**

To enhance compliance with FACA, CFR, and DOE policy, GC-77 will:

- Review operating procedures/bylaws submitted by the local Boards to be approved by the DFO.

EM Program Offices (as appropriate):

To enhance compliance with FACA, CFR and DOE policy, EM program offices will:

- Respond in a timely fashion to EM SSAB recommendations, as appropriate.

II.b. DOE Field Offices

Although DOE Headquarters (HQ), through the Assistant Secretary for EM and the CMO, is responsible for the EM SSAB, DOE Field Offices are accountable to DOE-HQ for local Board activities and act for EM at the local level.

The DOE Field Offices, per the requirements of FACA and the CFR, will:

- Ensure required records on Board costs and membership are maintained, as each agency needs to keep records that will fully disclose the disposition of any funds at the disposal of the Board. **FACA § 12(a); CFR § 102-3.175(b); Manual § VII**

- Make records available to interested members of the public. **CFR § 102-3.170; Manual § VII.4**
- Recommend to the DFO, a senior DOE official (or officials) to serve as the DDFO for the local Board. **FACA § 10(e); CFR § 102-3.120**
- Ensure that DOE diversity goals are met through adequate outreach efforts for membership. Board membership should reflect a diverse cross-section of those directly affected by and interested in the community from which the Board draws its members. **CFR 102-3.60 (b)(3)**
- Provide adequate resources to enable the Board to carry out its functions as described in **FACA § 12 (b); CFR § 102-3.95(a); Charter § 7; Manual § I.6.h**

To enhance compliance with FACA, CFR, and DOE policy, the DOE Field Offices will:

- Ensure that member appointment packages are submitted to EM Headquarters with nominations for the Assistant Secretary's appointment. Assistant Secretarial approval of new and reappointed members is required, with the exception of member appointments to fill an unexpired term. (See Section III.c.3)
- Provide timely response to Board recommendations.
- Review and, if satisfactory, submit local Board operating procedures/bylaws to the DFO for review and coordination with GC-77 to ensure that they are in compliance with FACA and other regulations and requirements.
- Review and approve local annual work plans.
- Review and approve EM SSAB budget requests and incorporate, as appropriate, into the EM budget development process.
- Coordinate with DOE-HQ on EM SSAB issues and processes.

II.c. Designated Federal Officer (DFO)/Deputy Designated Federal Officer (DDFO)/Federal Coordinator

Under **FACA § 10(e) and CFR § 102-3.120**, each federal advisory committee is required to have a DFO, in this case a DOE employee who works closely with the Board. The DFO for the EM SSAB is located in the Office of Public and Intergovernmental Accountability. The DFO delegates the responsibility to serve as onsite DDFOs to local DOE employees. The DDFO may appoint a Federal Coordinator to assist him/her.

The DFO/DDFO, per the requirements of FACA and the CFR, will, with Federal Coordinator assistance as appropriate:

- Call for and attend Board meetings. **FACA § 10(e)&(f), CFR § 102-3.120(a),(c)&(e)**
- Adjourn Board meetings if it is in the public interest. **FACA § 10(e), CFR § 102-3.120(d)**
- Approve meeting agendas. **FACA § 10(f), CFR § 102-3.120(b)**

- Ensure required records on Board costs and membership are maintained, as each agency needs to keep records that will fully disclose the disposition of any funds at the disposal of the Board. **FACA § 12(a); CFR § 102-3.175(b)**
- Ensure that detailed minutes of meetings, containing items specified in **CFR § 102-3.165**, are prepared and duly certified. **FACA § 10(c), CFR § 102-3.165**

The Manual requires that the DFO/DDFO, with Federal Coordinator assistance as appropriate:

- Ensure that conflict of interest regulations are followed. **Manual § IV.6**
- Arrange for reimbursement of travel expenses as necessary. **Manual § V.6.a.(2).(f)**
- Ensure that each Board meeting is held at a reasonable time and in a manner or place reasonably accessible to the public. **Manual § V.3**

To enhance compliance with FACA, CFR, and DOE policy, the DFO/DDFO/Federal Coordinator will:

- Encourage the Board to listen carefully to all points of view and to work toward consensus.
- Provide timely information for *Federal Register* notices to EM-13, and broad local notification about EM SSAB meetings and activities, e.g., in the local media, public reading rooms, and public libraries.
- Ensure that the Board has the opportunity to offer advice and recommendations on the charges issued by EM. To support this, it is recommended that the DFO/DDFO/Federal Coordinator:
 - Ensure that EM's decision-making process is clearly communicated.
 - Inform the Board members of EM programs, projects, and activities directly affecting the EM SSAB mission and purpose.
 - Work closely and cooperatively with the Board to prioritize issues.
 - Develop and approve an annual work plan that includes goals and priorities.

III. Operating a Local Site-Specific Advisory Board

III.a. Public Participation and Record-Keeping

III.a.1. Public Participation

In accordance with FACA and the CFR:

- Each advisory committee meeting shall be open to the public. **FACA § 10(a)(1)**
 - Although subject matter may indicate the need to close a meeting (e.g., for security considerations), **FACA § 10(d)** requires the head of the agency to which the committee reports to approve, in writing, closed sessions of full committees. **CFR § 102-3.155**
- Timely notice of each meeting shall be published in the *Federal Register* at least 15 calendar days prior to a local Board meeting. **FACA § 10(a)(2); CFR § 102-3.150(a)**
- Each meeting shall be held at a reasonable time and in a manner or place reasonably accessible to the public, and to include facilities that are readily accessible to and usable by persons with disabilities. **CFR § 102-3.140(a)**
- Any member of the public shall be permitted to file a written statement with the committee. **CFR § 102-3.140(c)**
- Any member of the public shall be permitted to speak at designated times. **FACA § 10(a)(3); CFR § 102-3.140(d); Manual § V.3.a.(2).(b)**
- Any meeting conducted in whole or part by teleconference, videoconference, the Internet or other electronic medium must meet the requirements of 41CFR Subpart D. **CFR § 102-3.140(e)**
- Subcommittees (also referred to locally as “committees”) of the local boards are not required to comply with the provisions of FACA so long as the local Board deliberates on any recommendations before they are approved. **CFR § 102-3.35 and 102-3.145**

In accordance with the Manual:

- Media representatives attending and reporting on open committee meetings are at liberty to use tape recorders, cameras, and electronic equipment for broadcast purposes. The use of such equipment must not interfere with the orderly conduct of the meeting. To preclude any disruption, news media personnel should be encouraged to position all equipment before the meeting and to defer removal until an ample intermission period or meeting adjournment. **Manual § V.3.b.**

III.a.2 Public Notification

In accordance with FACA and the CFR:

- Notice must appear in the *Federal Register* at least 15 calendar days prior to EM SSAB public meetings. **FACA § 10(a)(2) and CFR § 102-3.150(a).**
 - Notices must include:
 - The name of the advisory board, date, time, and place of the meeting;
 - The purpose of the meeting and a summary of the meeting agenda;
 - A statement as to whether all or part of the meeting will be closed;
 - The name, address, and phone numbers of the DFO/DDFO or another contact for a citizen who may wish to make a statement to the Board;
- All meetings shall have the advance approval and be attended by the DFO and/or DDFO. **FACA § 10(e)&(f); CFR § 102-3.120(a)&(c)**

In accordance with the Manual:

- Local DOE Operations, Field, or Area Offices must ensure that *Federal Register* notices are sent to EM-13 in timely manner. Whenever possible, 30 days notice will be given. **Manual § V.3.c**

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- *Federal Register* notices should also include the locations where meeting minutes will be made available to the public, an individual to contact to acquire copies of the minutes, and information on the public comment period.
- Local DOE Operations, Field, or Area Offices must ensure that timely notification is provided to EM-13 in the event a public meeting has been cancelled following the original submission of the *Federal Register* notice.

III.a.3. Minutes and Records

In accordance with FACA and the CFR:

- Detailed minutes of each advisory committee meeting shall be kept on file. **FACA §10(c), CFR § 102-3.165**
 - Minutes must include:
 - The name of the Board
 - The meeting time, date, and place
 - A list of meeting attendees including members of the public presenting oral and/or written statements, and an estimated number of other public present
 - An accurate description of each matter discussed and the resolution, if any, made by the Board

- Copies of all reports received, issued, and approved by the Board
 - Copies of each recommendation drafted or approved by the Board.
- The DDFO must ensure that the meeting minutes are certified by the Chair. **CFR § 102-3.165**
- The local boards and the Field offices must maintain in a single location, copies of records, reports, minutes, transcripts, memoranda, drafts, working papers, and other documents for public inspection. **FACA § 10(b); CFR § 102-3.170**
- The Field offices and the DDFOs must keep records to fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. **FACA § 12(a); CFR § 102-3.175(b)**
 - The multi-site structure of the EM SSAB necessitates that fiscal records be developed and maintained at local sites.
- Ten copies of each report made by a local board must be sent to the Deputy Committee Management Officer at U.S. DOE, 1000 Independence Avenue, S.W., MA-7, Room 7E-028, Washington, DC 20585. The Deputy CMO will forward eight copies of the annual reports to the Library of Congress. **CFR § 102-3.175(d)**

In accordance with the Manual:

- The minutes must include names of any member who may have recused themselves from a meeting or a portion of it and their reason(s) for doing so. **Manual § V.5.a.(2)**
- Two copies of Board minutes must be sent through the DFO to the Deputy Committee Management Officer at U.S. DOE, 1000 Independence Avenue, S.W., MA-7, Room 7E-028, Washington, DC 20585 within 45 days after the meeting. **Manual § V.5.d**

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- One copy of all local board reports, minutes, transcripts (where applicable), recommendations and responses, self-evaluations, and EM SSAB work plans are forwarded by the DDFO or local EM SSAB Federal Coordinator to the local reading room or other appropriate information resource center(s).
- One copy of each EM SSAB recommendation and the EM response is sent to the DFO at DOE-HQ for files.
- One copy of minutes, annual reports, self-evaluations, and work plans are sent to the DFO at DOE-HQ for files.

III.a.4 EM SSAB Annual Comprehensive Review to Headquarters

The DFO is required each year to provide to the EM Assistant Secretary an Annual Comprehensive Review (formerly Annual Report) on the activities of the EM SSAB during the preceding fiscal year. **Manual VII.3(b)**. Accordingly, local EM SSAB DDFOs and Federal Coordinators must submit each local board's data to the DFO within one month of the close of each fiscal year.

In accordance with FACA and the CFR:

- An informational report from DOE is provided to the General Services Administration at the close of each fiscal year. **CFR § 102.105(e) and 102-3.175(b)**.
 - The report includes:
 - The activities, status, and changes in EM SSAB composition during the fiscal year
 - The dates of EM SSAB meetings and names and occupations of its members
 - The estimated annual cost to DOE to fund, service, and supply the EM SSAB
 - Any reports and recommendations submitted by the EM SSAB

In accordance with the Manual:

- The CMO will issue instructions to the DFO regarding reporting requirements, procedures, and submission dates. The CMO will then be responsible for coordinating the Annual Comprehensive Review. **Manual § VII.3.b.2**
- The DFO, and subsequently the DDFO, is responsible for accurately and completely filling out individual committee reports by the due date assigned by the CMO. **Manual § VII.3.b.2**

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- The Annual Comprehensive Review include the following data:
 - Data from the previous fiscal year, to include:
 - The total number of reports (including annual reports, recommendation reports, letter reports, etc), the titles of each report or recommendation, and month/day/year they were generated;
 - The total number and dates of meetings held;
 - The names of board members (including current members and those who served on the board at any time during the year, but are no longer there);
 - The total federal support years (number of full-time employees that work on EM SSAB issues throughout the fiscal year – i.e., if persons spent half of their working time on EM SSAB issues, they

would count as 0.5 full-time employees, whereas if persons spent all their time on EM SSAB issues they would count as 1.0 full-time employees).

- Data required from both the previous fiscal year and the next year's projections, to include:
 - Personnel payments to non-federal members (total dollar amount);
 - Personnel payments to federal members;
 - Personnel payments to federal staff;
 - Personnel payments to non-member consultants;
 - Travel and per diem to non-federal members;
 - Travel and per diem to federal members;
 - Travel and per diem to federal staff;
 - Travel and per diem to non-member consultants;
 - Other (rent, user charges, graphics printing, mail, etc.);
 - The total dollar amount of all costs.
- Information on the impact the Board has had on DOE activities during the past fiscal year is required (e.g., the Hanford Advisory Board recommended that the Department reduce indirect costs, saving more than \$200 million; the Nevada Citizens' Advisory Board supported the decision to apply for a RCRA Part B permit that will enable the site to accept mixed low-level waste from throughout the DOE complex, etc.).

III.b. Board Recommendations and DOE Responses

FACA, the CFR, and the DOE Manual do not provide specific parameters for Board recommendations or DOE responses. The CFR does suggest that EM continually seek feedback from the Board members and the public regarding the effectiveness of the Board's activities. At regular intervals, EM should communicate to the Board members how their advice has affected DOE programs and decision-making. **CFR § 102-3.95(e)**

To enhance compliance with FACA, CFR, and DOE policy, EM requires that:

- In general, and in a timely fashion, DOE Field offices should reply to site-specific recommendations. The Assistant Secretary for EM is responsible for replying to recommendations regarding cross-site or national issues. When appropriate, responses should be in writing. A copy of any recommendation and response should be sent to EM-13.

DOE written responses should include the following:

- A clear statement of acceptance or rejection of the recommendation, in whole or in part;
- If the recommendation is accepted in whole or in part, a statement about how the changes will be implemented and in what time frame;

- If the recommendation is rejected in whole or in part, a substantive reason for the decision, as well as possible alternatives for addressing the concerns or issues raised in the recommendation; and
- If unresolved issues still remain, DOE may indicate this in written correspondence to the local EM SSAB with the goal of establishing (or continuing) a near-term dialogue.

III.c. Membership

III.c.1. EM SSAB Membership Composition

It is DOE policy that the Board membership provides for ethnic and gender diversity. In this regard, Boards must make vigorous outreach efforts and be able to demonstrate that they have attempted to recruit members from all segments of their communities. In order to comply with both FACA and Departmental policies regarding balance and diversity requirements of advisory committees, the DOE Offices of EM; Management (MA); and GC closely scrutinize Board membership.

In accordance with FACA and the CFR:

- The Board must be “fairly balanced in terms of the points of view represented and functions to be performed.” **CFR § 102-3.60(b)(3)**

In accordance with the Manual:

- Accordingly, to the extent possible, Board membership should reflect a representative diversity of viewpoints in the affected community and region and include primarily people who are directly affected by DOE site cleanup activities. **Manual § IV. 3**
- In selecting membership nominees, attention must be given to the conflict of interest considerations discussed in Section IV of the Guidance. Pursuant to DOE policy, employees of DOE contractors may be appointed only when necessary to achieve balance or diversity on a local Board, or to contribute adequate technical knowledge of site operations. Such individuals must receive a written waiver from the DOE Committee Management Officer. **Manual § IV. 3.b**

To enhance compliance with FACA, CFR and DOE policy, EM prefers that:

- Statistics from the U.S. Census Bureau serve as guidance for comparing Board membership with gender and ethnic diversity in the corresponding community, but statistics will not justify failure to make adequate outreach efforts.
- Board members are typically drawn from stakeholder groups and organizations, including but not limited to:
 - Local governments
 - Tribal governments

- Environmental organizations
- Labor organizations
- Universities and colleges (including minority institutions)
- Tribal, Hispanic and other Minority organizations
- Women's groups
- Business groups
- Civic/religious groups
- Federal, state, Tribal and local government officials are encouraged to recommend prospective members for the local EM SSAB to EM.
- Officials from DOE, the Environmental Protection Agency, and state, local and Tribal governments may serve as liaisons to the local Boards. Liaisons may attend and participate in Board meetings, but do not have voting privileges.
- Nomination and appointment of members shall be accomplished using procedures designed to ensure a diverse Board membership and a balance of representative viewpoints.

III.c.2. Member Appointment

In accordance with FACA and the CFR:

- According to the CFR, membership terms are at the sole discretion of the appointing or inviting authority. **CFR § 102-3.130(a)**

In accordance with the Manual:

- Appointments should be staggered. **Manual § IV.2.e.1**
- GC and the CMO will review nominations to the Board to ensure compliance with FACA requirements, as well as GSA and Departmental requirements. **Manual § I.6.g, IV.2.b**
- EM must include the following information in member nomination packages (see **Manual § IV. 5.a**):
 - A memorandum from the Field Manager to the Assistant Secretary for EM recommending the nominees for membership;
 - A copy of the current Charter;
 - Biographies for all proposed and continuing members;
 - The names, phone and fax numbers, and mailing and email addresses of all proposed members (i.e., new appointments, reappointments and continuing members);
 - The names and companies of contractors or federal employees requiring letters of exception to serve on the Board;
 - Outreach efforts conducted to attract new members in the current membership drive (attach copies of letters sent, press releases, radio advertisements, newspaper advertisements, etc);
 - Completed membership criteria matrices for proposed and current members, and

- Letters of invitation to each member for signature by the Assistant Secretary.
- The Secretary of Energy has delegated authority for EM SSAB member appointments and reappointments to the Assistant Secretary for EM, who has delegated limited authority to the Field offices. This includes initial appointments for positions established in the local EM SSAB bylaws or operating procedures, but which, to date, remain unfilled. **Manual § IV.2.a**
- Appointments and reappointments require concurrence from the Office of Public and Intergovernmental Accountability, GC, MA, and the CMO. **Manual § IV.5.b**
- DOE retains appointment and removal authority. **Manual § IV.2.g**

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- DOE Field Offices provide an information package, no less than twelve (12) weeks or three (3) months in advance of the desired appointment date for new appointments or reappointments, in both electronic and hard copy. An electronic copy should be submitted to the Director of the Office of Public and Intergovernmental Accountability. The hard copy should go to the Assistant Secretary for EM. It is critical that sites submit packages in sufficient time for DOE Headquarters to conduct its review and concurrence process.
- The DFO shall oversee the production of all other aspects of the membership package.

III.c.3. Delegated Authority to the Field for EM SSAB Member Appointments

To enhance compliance with FACA, CFR and DOE policy, the Assistant Secretary for EM has delegated limited authority to appoint new EM SSAB members to the DOE Operations, Field and Area Offices.

- The Field can replace members who have resigned with time remaining in their membership terms under the following terms and conditions:
 - The appointments can be made *only* for the remainder of the previous member's term;
 - No more than 20% of members can be appointed by any one site in any given calendar year; and
 - When appointing new members under this delegated authority, DOE Field Office managers must comply with FACA, GSA and DOE regulations, including appropriate conflict of interest restrictions.
- EM-13 must be advised of all such appointments, and all relevant information must be provided (i.e., name, contact information, biography, and matrix information) to it in a timely manner.

III.c.4. Removal and Resignation of EM SSAB Members

DOE Operations, Field, and Area Offices may recommend to the Assistant Secretary that local Board members be removed from the EM SSAB as deemed necessary in order to carry out the mission of the EM SSAB (e.g., missing three consecutive Board meetings or having three unexcused absences in a given calendar year). Members serve at the pleasure of the Assistant Secretary for EM.

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- Members who wish to resign from the Board are requested to submit a letter to the Assistant Secretary for EM, with copies to the DDFO, the local EM SSAB Chair, and EM-13.

III.d. Community Education and Member Recruitment

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- Field office staff should ensure that the community is aware of and engaged in Board activities.
- DDFOs and Federal Coordinators should ensure that Board activities are appropriately coordinated with other Field office public involvement activities.
- As discussed above, the Board should be reflective of the gender, minority and ethnic diversity in the community from which the Board draws its members. Recruitment efforts should be targeted to achieve such diversity.
- Community education and membership recruitment efforts may include, but are not limited to, targeted mailings, notices in newsletters, press releases, advertisements in local and regional papers, advertisements on websites, and radio and television advertisements.

IV. Conflict of Interest

Appointing or reappointing local Board members, such as DOE management and operating contractor employees, who may reasonably be expected to have a potential conflict of interest regarding certain issues that might be considered by the Board, is permissible when necessary to achieve balance or diversity on a local Board, or to contribute adequate technical knowledge of site operations. In the event of such an appointment, the CMO must sign a letter of exception allowing this individual to serve on the Board. A statement that thoroughly describes the individual's potential conflict of interest and explains why this individual's appointment is deemed essential must be included in the memorandum from the Operations Office manager in the Board's membership package.

If such a member is appointed, the local site DDFO is required to take special care to ensure that the appointment of this member will not result in a conflict of interest or appearance of such conflict which can lead to actual bias, or perception of possible bias, in the review of DOE activities or projects. This individual will be informed of the general conflict of interest provisions and asked to disclose the potential or actual conflict of interest and recuse him/herself from voting on issues that would have a direct and predictable effect on his/her employing organization, represented group (s) or other entities with which he/she is associated or in which he/she has a financial, professional, or private interest or will receive either tangible or intangible benefits. All members should advise the local Board chair and the DDFO of a potential or actual conflict in advance of any discussion of such a topic and, at the time of the discussion, make their potential or actual conflict of interest a matter of record. In the event of a potential or actual conflict of interest, a statement is required to be included in the local site Board minutes detailing the conflict, and the action taken to remove it. In the case of a potential or actual conflict of interest arising during a subcommittee meeting, the individual with the conflict will report it to the subcommittee chair, who will report it to the DDFO.

The Assistant General Counsel for General Law reviews new member qualifications for conflict-of-interest issues and the Field General Counsel handles mid-term replacements (Section III.c.3 of the Guidance). If a proposed mid-term appointment exhibits a potential conflict or conflict of interest, the local DDFO must provide the Field General Counsel with any relevant materials and consult with EM-13 and the Office of the Assistant General Counsel for General Law if necessary.

All Board members must adhere to the following general conflict of interest requirements:

- A member shall refrain from any use of his or her membership, which is, or gives the appearance of being, motivated by the desire for private, professional, or financial gain;

- A member shall not use either directly or indirectly for private or professional gain for him/herself or for his/her represented group any inside information obtained as a result of advisory committee service;
- A member shall not use his or her position in any way to coerce or give the appearance of coercing another individual to provide a financial benefit to the member with the conflict of interest or any person with whom that member has family, business, or financial relationships;
- A member shall recuse him or herself from decisions and discussions related to real or perceived conflicts of interest, act impartially, and avoid the appearance of impropriety;
- A member shall not create situations that may result in conflicts of interest or questions regarding the objectivity and credibility of the Board process; and
- A member should seek immediate guidance, beginning with the local DDFO, if he or she is offered anything of value such as a gift, gratuity, loan, or favor in connection with advisory committee service.

In addition, for the potential conflict of interest situation where a Board member is a party in a legal action against the Department, or where a Board member is a member of an organization that is a party in a legal action, the individual's continued membership on the Board will be considered by the DFO on a case by case basis, in consultation with both the Office of General Counsel at DOE Headquarters and the Office of Chief Counsel at the DOE Operations, Field, or Site Office.

V. Funding and Other Support

In 1997, funding of the local boards under the EM SSAB became the responsibility of the DOE Field Offices. Accordingly, DOE Field office managers provide adequate funding to local boards to enable them to operate efficiently and effectively.

In accordance with FACA and the CFR:

- DOE will provide adequate support services as necessary. **FACA § 12(b); CFR § 102-3.95(a)**

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- EM SSAB procurement mechanisms will be structured and managed to ensure proper stewardship of this stakeholder activity and to increase accountability and visibility of resources provided and subsequently used. The three options for funding administrative support for the EM SSAB are:
 - Non-Profit Organization (Section 501(c) of the IRS Code)
 - Direct DOE Federal Management and Support
 - Support Services Contract with a Section 8(a) Small Business

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- Adequate support services include, but are not limited to:
 - Office space;
 - Necessary supplies and equipment;
 - Federal staff support;
 - Coordination of meetings and agendas;
 - Coaching for members and presenters;
 - Support monitoring emerging issues and activities;
 - Funding for an independent facilitator if necessary to ensure that Board members set and reach objectives, maintain focus, work as a team, strive for consensus, and operate at maximum efficiency; and
 - Funding for independent technical reviews of key issues or ongoing technical assistance to the Board. However, Field offices should ensure that technical assistance funding is used to complement, rather than duplicate, the technical programs of DOE and its regulating agencies.
- Field office managers, through the DDFO and Federal Coordinator, must work closely and cooperatively with their local EM SSAB to develop a budget that is consistent with the Board's mission, scope, and annual work plan.
- After the work plan is approved by the DDFO, the DOE Operations, Field or Area Office should provide sufficient funding to carry out the work plan.
- Field managers should report the level of funding, including technical assistance funding, to EM-13 in the form of an Annual Report of all EM SSAB activities at the end of each fiscal year.

VI. Compensation and Travel Expenses

VI.a. Board Service Is Not Compensable

The DOE **Manual § IV.4.d** provides that special Government employees (SGEs) serving on advisory committees may be compensated for government service. However, individuals serving on the EM SSAB are not SGEs and are not eligible for compensation. Individuals who serve on the EM SSAB are appointed on the basis of their ability to represent local interests and concerns, physical proximity to the site, and ability to donate adequate time to Board activities. Members may also be representatives from local governmental; Tribal nations; environmental, civic, and religious groups; labor organizations; and academia. EM SSAB members serve in a representational capacity and as such, are not eligible for compensation.

VI.b. Travel Reimbursements

FACA and the CFR provide that advisory committee members, while engaged in the performance of their duties away from their homes or regular places of business, “may be allowed travel expenses, including per diem in lieu of subsistence” to the same extent that is allowed for Federal employees. **FACA § 7(d)(1)(B); CFR 102-3.130(k)**. Moreover, the payment of additional travel expenses which are necessary to provide reasonable accommodation for a Board member with a disability or special physical need may be authorized, provided that the member’s disability or special physical need is clearly visible and discernible or substantiated in writing by a competent medical authority, in accordance with Federal Travel Regulations. **CFR § 301-13.2 and 102-3.130(l)**

In accordance with the Manual:

- Coverage: Members will be reimbursed for travel expenses and per diem only when they are on committee business while away from their residence or regular places of business. **Manual § VI.3.a**
- Tickets: Generally, DOE will provide members with a Government fare common carrier ticket. If DOE is unable to provide a member with a common carrier ticket, the member may use personal means to purchase transportation, but when costs exceed \$100, a senior DOE official is required to review the circumstances of the purchase before reimbursement, which may not exceed the Government-authorized fare. **Manual § VI. 3.b**
- Major travel to and from meetings: Airfare is limited to the regular, round trip, coach-class fare or when available, Government contract airlines between the member’s residence or regular place of business and the meeting site. Train travel is authorized when it is advantageous to the Government. A member may also travel to and from the meeting in his/her private vehicle and DOE will reimburse the member at the mileage allowance rate and for fees. **Manual § VI.3.c**

- DOE will reimburse members for lodging, meals, and incidental subsistence expenses associated with travel for meetings using a per diem allowance (i.e., a daily payment instead of reimbursement for actual expenses). **Manual § VI.3.e**

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- Members with questions on travel requirements or reimbursements should consult with the local Field office prior to commencing travel or completing the reimbursement voucher.
- In addition, DDFOs and Federal Coordinators are responsible for determining, after consultation with appropriate offices and/or individual at their Field sites, whether it is appropriate to fund official travel for non-members to specific EM SSAB-related activities; and if so, how it should be funded.
- Funding and compensation for travel is considered part of the annual budget allocation for the Board.

VII. Board Termination

In accordance with FACA and the CFR:

- All local boards operate under the EM SSAB Charter, which is renewed biennially. If that charter is not renewed, all local Boards will terminate automatically. **FACA § 14, CFR § 102-3.55(a)**
- Pursuant to **CFR 102-3.30(b)**, the EM SSAB and/or local Boards terminate when:
 - The stated objectives of the Board have been accomplished;
 - The subject matter of work of the Board has become obsolete by the passing of time or the assumption of the Board's functions by another entity; and/or
 - DOE determines that the cost of operation is excessive in relation to the benefits accruing to the federal Government.

In accordance with the Manual:

- Criteria for termination include the criteria in FACA and the CFR. The decision to terminate a committee may include a determination that the advice is no longer essential to EM or is no longer in the public interest; that the committee has not been staffed for one year; or that the committee has not met for a two year period. **Manual § III.8.a**
- After a decision to terminate the Board is made, the Field office manager should send a memorandum to the Assistant Secretary requesting that the Assistant Secretary terminate the Board. The memorandum should note the reasons for the Board's suggested termination, as well as its accomplishments over the years.
- Letters of appreciation from the Assistant Secretary to the Board members for services rendered must be included in the termination package. **Manual § III.8.b.1**

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- Once the EM mission is completed at a site where there is a local board under the EM SSAB Charter, the local board will be terminated upon physical and/or regulatory closure.
- If the chartered purpose for a local board cannot be fulfilled, the DDFO, in consultation with DOE Headquarters and members of the local EM SSAB, will begin establishing a timetable for disestablishing the local board. The resulting termination package will be sent through the same concurrence chain as a member appointment package.

VIII. Acronyms & Definitions

CFO Chief Financial Officer
CFR Code of Federal Regulations
CMO Committee Management Officer
DDFO Deputy Designated Federal Officer
DFO Designated Federal Officer
DOE U.S. Department of Energy
EM Office of Environmental Management
EM SSAB Environmental Management Site-Specific Advisory Board
EM-1 Assistant Secretary for EM
EM-10 Office of Regulatory Compliance
EM-13 Office of Public and Intergovernmental Accountability
EPA Environmental Protection Agency
FACA Federal Advisory Committee Act
FTR Federal Travel Regulations
GC General Counsel
GSA General Services Administration
MA Office of Management
NE Office of Nuclear Energy
NNSA National Nuclear Security Administration
MA Office of Management and Administration
OMB Office of Management and Budget
SC Office of Science

Advisory Committee: Any committee, board, council, etc. established by statute. Or established or utilized by the President or Federal agency in order to obtain advice for the President, agencies or officers of the federal Government. **FACA § 3(2)**

EM SSAB Charter: The governing document for the EM SSAB, including all local boards, which is renewed biannually and approved by the CMO.

DOE Field Office(s): Any DOE area, field, and site offices, and/or business centers located outside the Washington, D.C. area.

Liaisons: The Assistant Secretary or DOE Field Managers may request that other Federal, State, or Tribal organizations name liaisons to the EM SSAB to provide information and represent their agency's interests at local meetings. Liaisons may participate in discussions, but can not vote and are not included in a quorum.

Manual: "Advisory Committee Management Program" Manual, DOE M 515.1-1, 10/22/07

IX. Applicable Law, Regulations, Orders and Policy

Statutes: Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1997) (original version at Pub. L. No. 92-463, 86 Stat. 770 (1972))
http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=9149&channelId=-13174&oid=9761&contentId=11635&pageTypeId=8203&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MC

Regulations: Federal Advisory Committee Management, 41 CFR Part 102-3. See also: 52 Fed. Reg. 45926 (1987). http://www.access.gpo.gov/nara/cfr/waisidx_99/41cfr105-54_99.html

Specific Agency Regulations: Office of Human Resources and Administration, U.S. Department of Energy (DOE), Pub. No. DOE M 515.1-1, *Advisory Committee Management Program* (2007) (Manual).
<http://www.directives.doe.gov/pdfs/doe/doetext/neword/515/m5151-1.pdf>

Charter: Office of Environmental Management, Office of Intergovernmental and Public Accountability, U.S. Department of Energy Amended Charter: Environmental Management Site-Specific Advisory Board (2008).
<http://www.em.doe.gov/pdfs/2008%20EM%20SSAB%20Charter%20Final%20041108.pdf>

Policy: Department of Energy Public Participation and Community Relations Policy (DOE P 141.2) (May 2, 2003)
<http://www.directives.doe.gov/pdfs/doe/doetext/neword/141/p1412.pdf>

Delegations:

- Department of Energy Delegation Order No. 00-002.00B to the Under Secretary for Energy, Science, and Environment (October 4, 2004).
http://www.directives.doe.gov/pdfs/sdoa/00-002_00B.pdf
- Department of Energy Re-delegation Order No. 00-002.03B to the Assistant Secretary for Environmental Management (January 29, 2007).
http://www.directives.doe.gov/pdfs/sdoa/00-002_03B.pdf